Filed 3/13/12 In re Bryson H. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re BRYSON, H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. BRYSON H., Defendant and Appellant.	F062402 (Super. Ct. No. JW112178-05) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Kern County. Peter A. Warmerdam, Judge.

Arthur Lee Bowie, under appointment by the Court of Appeal, Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Gomes, Acting P.J., Poochigian, J. and Detjen, J.

The juvenile court committed appellant, Bryson H., to the Department of Corrections, Division of Juvenile Justice (DJJ) after appellant admitted violating his probation (Welf. & Inst. Code, § 777, subd. (a)(2)) by making criminal threats (Pen. Code, § 422)[1].

On appeal, appellant contends: 1) the court abused its discretion when it committed him to the DJJ; and 2) he is entitled to additional predisposition custody credit. We find merit to this last contention. In all other respects, we will affirm.

FACTS

Prior Petitions

On October 4, 2006, at Sequoia Middle School in Bakersfield, appellant, who was then 12 years old, walked out of the in-school suspension room where he was being detained for defiant behavior. He returned a few minutes later, but refused to follow instructions to sit down. Appellant then threw two chairs across the room, one of which struck another student on the leg. After storming out of the room a second time, appellant opened a fire alarm box. When the campus supervisor put his hand on appellant's shoulder, appellant threatened to punch him. Appellant then punched another fire alarm box, breaking the plastic cover.

On October 10, 2006, appellant admitted a misdemeanor count of making threats against a school officer or employee. (§ 71.)

On October 24, 2006, the court adjudged appellant a ward of the court and placed him on probation for three years.

On October 22, 2007, appellant was in the vice principal's office while his suspension from school was being processed when he was contacted by the school resource officer. Appellant attempted to leave the office and pushed the officer in the

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1 Unless otherwise indicated, all further statutory references are to the Penal Code.

chest with both arms. After a brief struggle, appellant was arrested for battery on a peace officer (§ 243, subd. (b)) and resisting arrest (§ 148, subd. (a)).

On November 28, 2007, the probation department filed a notice of probation violation alleging that appellant violated his probation on October 22, 2007, by pushing a police officer and resisting arrest, and on November 12, 2007, by failing to report a change in address.

On January 11, 2008, appellant admitted violating his probation by not reporting a change in address and by resisting arrest.

On January 28, 2008, the court continued appellant on probation and ordered him to serve five days in juvenile hall.

On April 15, 2008, the probation department filed a notice of probation violation alleging that appellant violated his probation by failing to obey instructions by his probation officer on March 22, 2008, and by being out of parental control on April 3, 2008. On May 2, 2008, appellant admitted violating his probation as alleged in the notice of probation violation. The court then continued appellant on probation and ordered him to serve an additional five days in juvenile hall.

On October 9, 2008, the Dean of Students at Bakersfield High School and a police officer contacted appellant regarding reports that he was selling marijuana to other students at school. The officer confiscated appellant's backpack and instructed him to go to the office with the dean. En route to the office, appellant ran away and discarded a white sock containing 35.5 grams of marijuana. An additional gram of marijuana was found inside appellant's backpack. Appellant subsequently admitted that he had been selling marijuana at school for about a week.

On October 27, 2008, appellant ran away from home. The following day he returned to his father's house and asked his father's girlfriend, Cam Martin, for his clothes. When Martin told him he did not need them, appellant got mad, grabbed an aluminum baseball bat, and began striking the porch, fence, and metal security door.

When Martin opened the door, appellant swung the bat at her, narrowly missing. Appellant fled but was soon apprehended.

On October 30, 2008, the district attorney filed a petition charging appellant with assault with a deadly weapon (§ 245, subd. (a)(1)), vandalism (§ 594, subd. (b)(2)(A)), possession for sale of marijuana (Health & Saf. Code, § 11359), and resisting arrest.

On November 12, 2008, appellant admitted the assault charge in exchange for dismissal of the remaining counts.

On November 25, 2008, the court committed appellant to the Kern County Crossroads Facility (Crossroads).

On July 5, 2010, during an argument, appellant punched his sister two or three times on the face. Appellant's sister followed him outside of the house and he hit her several more times. When appellant's 22-year-old aunt tried to intervene, appellant put her in a head lock and pulled her to the street. Appellant and his aunt fell to the ground--causing appellant's aunt to scrape her elbows. Appellant's 16-year-old cousin attempted to intervene and appellant punched her on the left side of her face and pulled her hair. Appellant fled but was arrested later when he returned.

On July 7, 2010, the district attorney filed a petition charging appellant with two counts of misdemeanor battery (counts 1 & 2/§ 243, subd. (a)) and one count of violating his probation.

On July 29, 2010, appellant admitted violating his probation by committing the offenses charged in counts 1 and 2, and those counts were dismissed.

On August 13, 2010, the court recommitted appellant to Crossroads.

The Current Petition

On December 14, 2010, the court placed appellant, who was then 17 years old, in the Summer Breeze Group Home.

On January 12, 2011, appellant ran away from the home.

On January 20, 2011, while being detained in juvenile hall pending placement, appellant and another juvenile were sent to their rooms for talking without permission during rule session. When Juvenile Correctional Officer Veronica Andriano went to secure appellant in his room, appellant told her, "I don't give a f***, wait 'til I see you on the outs bitch." He then charged at Andriano, preventing her from closing the door to lock it and requiring Andriano to spray appellant with pepper spray to subdue him. Later, when another officer told appellant that making threats was unacceptable, appellant stated "Sir, that shit doesn't scare me. I set it off in Crossroads. I'm gonna light this bitch up on this side too."

On February 15, 2011, the district attorney filed a petition charging appellant with making criminal threats and violating his probation.

On March 4, 2011, the district attorney dismissed the criminal threats charge and appellant admitted violating his probation.

Appellant's probation report noted that appellant denied being a gang member or associate. Appellant reported that he began smoking marijuana at the age of 12 and last used it in July 2009. He also reported that he experimented with alcohol on three occasions. Although appellant had been diagnosed with attention deficit disorder and bipolar disorder, he was not currently taking any medications. The probation officer who screened appellant's case considered a commitment to DJJ but concluded that the minor could benefit from a recommitment to Crossroads, which runs from 12 to 15 weeks. The probation officer did not recommend a commitment to the Glen Mill Program because that program only accepted juveniles 15 to 18 years of age and appellant would not be able to complete their 18-month program before he turned 18 years old in November.

On March 18, 2011, at appellant's disposition hearing, the court asked the probation officer why the probation department believed a third commitment to Crossroads would be appropriate and a commitment to DJJ unwarranted. The probation officer stated she felt that appellant would take a commitment to Crossroads seriously

this time because he was going to turn 18 years old in November and knew that if he committed another violation, it would be handled at an adult level. However, after reviewing appellant's juvenile hall observation report, she agreed that appellant had not yet "gotten it."

After hearing argument, the court committed appellant to DJJ for a maximum term of confinement of four years.

On April 15, 2011, defense counsel filed an amended application for rehearing on appellant's commitment to DJJ, which was denied the same day.

On April 25, 2011, the court reconvened the disposition hearing because it neglected to make certain findings at the original hearing. During arguments the prosecutor noted that DJJ offers counseling and educational opportunities. At the conclusion of the hearing, the court again committed appellant to DJJ.

DISCUSSION

The DJJ Commitment

Appellant contends that the court abused its discretion in committing him to DJJ because: 1) the sole reason for committing him there was to punish him; and 2) the record does not contain any evidence that a less restrictive commitment to Crossroads would have been ineffective or inappropriate or that he would benefit from a commitment to DJJ. We will reject these contentions.

On an appellate challenge to a DJJ commitment decision, we apply the abuse of discretion standard of review and indulge all reasonable inferences to support the court's decision. (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) By that standard of review, our duty is to disturb the court's determination if, and only if, after viewing all of the evidence most favorably in support of the court's order, no court reasonably could have issued such an order. (*In re Levi H.* (2011) 197 Cal.App.4th 1279, 1291.) Even so, the record must contain evidence demonstrating not only a probable benefit to the minor

by a DJJ commitment, but also the inappropriateness or ineffectiveness of less restrictive alternatives. (*Angela M., supra,* at p. 1396.)

Appellant had a long history of assaultive conduct, making threats, and defiance of authority figures, which continued even though he had spent considerable time in juvenile hall and served two commitments to Crossroads. The court could find from these circumstances, appellant's age and his flight from one placement, that less restrictive alternatives, including a third commitment to Crossroads, would be ineffective or inappropriate because appellant needed to be placed in a long-term, secure placement.

Moreover, there is no rigid test for determining whether a commitment to DJJ would benefit a minor. (See, e.g., *In re Martin L.* (1986) 187 Cal.App.3d 534, 543-544.) Instead, the court must consider the individual circumstances in light of the potential reformative, educational, rehabilitative, treatment, and disciplinary benefits DJJ may provide to the minor. (See Welf. & Inst. Code, §§ 202, 734; *In re Gerardo B.* (1989) 207 Cal.App.3d 1252, 1258-1259.) Factors include the minor's age, the seriousness of the minor's criminal conduct, the minor's mental and physical needs, the minor's prior record, the extent of the minor's need for a controlled environment, the threat the minor poses to the community, and the efficacy of prior dispositions in rehabilitating the minor. (See Welf. & Inst. Code, §§ 202, 734; *Gerardo B., supra,* 207 Cal.App.3d at pp. 1258-1259; *In re Anthony M.* (1981) 116 Cal.App.3d 491, 503-505; *In re Jesse McM.* (1980) 105 Cal.App.3d 187, 191-193.) In determining whether commitment to DJJ would be beneficial to the minor, the court may also consider "punishment as a rehabilitative tool." (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396; see Welf. & Inst. Code, § 202, subd. (e)(5).) However, a minor should not be committed to DJJ solely on retributive grounds. (*Michael D., supra,* 188 Cal.App.3d at p. 1396.) Rather, the juvenile court must focus on both the need for public protection and the best interests of the minor. (Welf. & Inst. Code, § 202; *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.)

In light of appellant's violent, out of control behavior and his lack of respect for authority, which is amply demonstrated by the record, the court could reasonably conclude that he would benefit from the structure and discipline inherent in a DJJ commitment, as well as the counseling, educational, vocational and other programs available there. (See *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 153.) Further, appellant's entire juvenile court file will be sent to DJJ (Welf. & Inst. Code, § 735), and that file, along with DJJ's evaluation of appellant, will show his present needs. Since DJJ is mandated to provide treatment to its wards (Welf. & Inst. Code, § 1700), there is no reason to believe appellant will not receive whatever treatment DJJ determines is in his best interest.

Appellant's commitment to DJJ is also consistent with the purposes of the Juvenile Court law which, as mentioned above, now recognizes punishment as a rehabilitative tool and the need to protect the public as a legitimate concern. Accordingly, we conclude that the court did not abuse its discretion when it committed appellant to DJJ.

The Credit Issue

At appellant's disposition hearing on March 18, 2011, the court awarded him 430 days of predisposition credit. On April 25, 2011, the court reconvened the disposition hearing and recommitted appellant to DJJ because it neglected to make certain orders at the original disposition hearing. The court however, did not award appellant any additional predisposition credit for the additional 38 days he remained in custody from his initial disposition hearing on March 18, 2011, until his April 25, 2011, disposition hearing. Appellant contends that he is entitled to predisposition credit for the additional 38 days he spent in custody during that time. Respondent concedes and we agree.

"[A] minor is entitled to credit against his or her maximum term of confinement for the time spent in custody before the disposition hearing. [Citations.] It is the juvenile court's duty to calculate the number of days earned, and the court may not delegate that duty. [Citations.]" (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.)

Welfare and Institutions Code section 726, subdivision (c), provides in part: "'Physical confinement' means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority."

Since appellant was housed in juvenile hall between both disposition hearings, he is entitled to an additional 38 days of predisposition credit.

DISPOSITION

The judgment is modified to increase appellant's award of predisposition credits from 430 days to 468 days. As modified, the judgment is affirmed.